



DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1489

RIN 0551–AB06

Regional Agricultural Promotion Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, U.S.

Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the Agricultural Trade Promotion Program regulation to implement the Regional Agricultural Promotion Program (RAPP). The RAPP will provide assistance to eligible organizations that conduct market promotion activities, including activities to address existing or potential non-tariff barriers to trade, to promote U.S. agricultural commodities in certain foreign markets. Among other changes, this rule updates terminology used throughout the regulation, clarifies timeframes for reporting requirements, and removes the specific application and review requirements from the regulation to be defined in Notices of Funding Opportunity (NOFOs) announced through the Grants.gov website.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Although not required by the Administrative Procedure Act (APA), CCC will accept comments received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by RIN 0551–AB06, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov>. This portal enables respondents to enter short comments or attach a file containing lengthier

comments.

- Email: PODadmin@usda.gov. Include 0551– in the subject line of the message.
- Mail, Courier, or Hand Delivery: Curt Alt, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue, S.W., Room 6512, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Curt Alt, (202) 690–4784, podadmin@usda.gov. Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact RARrequest@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In the face of significant and unpredictable challenges around the world, including impacts to international commodities markets in the wake of ongoing conflicts, a changing climate, an increasing agricultural trade deficit, and increased competition in U.S. export markets, USDA recognizes that additional investments in market development are needed to keep U.S. agriculture ahead of the competition. Consistent with a bipartisan request from the Senate Committee on Agriculture, Nutrition, and Forestry, USDA is utilizing CCC funds to implement the RAPP program to address the challenges related to trade impacting U.S. farmers and the international community. Continuing the work started under the Agricultural Trade Promotion Program (ATP), RAPP funding will ensure that U.S. agricultural industries are able to sustain the relationships key to effective market development and will enable exporters to break into new markets and increase market share in growth markets. RAPP Participants may receive assistance for either generic or brand promotion activities as well as assistance to conduct activities to address existing or potential non–tariff barriers to trade.

The Foreign Agricultural Service (FAS) will administer the RAPP on behalf of the CCC. Specific program requirements and details for applying for assistance under the RAPP will be set forth in NOFOs announced through the Grants.gov website.

Eligible Organizations

As with ATP, the RAPP is a cost-share program that is designed to reimburse nonprofit U.S. agricultural trade organizations, nonprofit state regional trade groups, state agencies, U.S. agricultural cooperatives, and other entities that conduct approved foreign market promotion activities. When considering applicant organizations, the CCC will give priority to organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted. Eligible activities can be generic or branded in nature. In order to be eligible for RAPP assistance, U.S. for-profit entities shall be limited to those whose size does not exceed 300 percent of the small business size standards established for their particular industry and published at 13 CFR part 121, Small Business Size Regulations. Eligible for-profit entities may participate in a RAPP Participant's brand promotion program. Any RAPP Participant that operates a brand promotion program will be required to establish brand program operational procedures. A RAPP Participant shall publicize its RAPP program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of State Regional Trade Groups (SRTGs), throughout the corresponding region.

General Provisions

CCC will use the Unified Export Strategy (UES) Internet-based system to receive RAPP applications and to receive reimbursement requests from RAPP Participants. This is the system used for the ATP and similar CCC programs. Details about the application requirements and process will be announced in the RAPP NOFOs.

CCC will evaluate each eligible proposal against the factors described in the appropriate NOFO to identify those applications that it considers to best meet the criteria and objectives outlined in the NOFO. Based on its review and evaluation, CCC will, subject to the availability of funds, recommend an appropriate funding level for each proposal and submit the proposals and funding recommendations to the appropriate officials for decision.

As with the ATP program, participants in the RAPP will be required to contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources to be provided by the CCC for all generic promotion activities proposed to be undertaken by the RAPP Participant. Brand participants will also be required to contribute an amount in goods, services, and/or cash equal to at least 50 percent of the cost of all brand promotion activities they undertake under the RAPP.

This rule includes updated lists of expenses eligible and ineligible for reimbursement under the RAPP. Procedures for requesting reimbursement for eligible expenditures, or, if appropriate, for advances of program funds, are described in the regulation. Because it is critical that program funds are managed and accounted for properly and are focused on achieving results, paragraphs regarding financial management, reporting on outcomes that tie assistance directly to increased trade, evaluation, and compliance review are included. Finally, to ensure that funds provided under the RAPP are expended in a cost-effective manner and are protected from fraud, CCC carries forward the provisions regarding ethical conduct, contracting, and anti-fraud requirements from the existing regulation.

Effective Date and Comments

This rule is effective upon publication in the Federal Register. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides that notice and comment and a 30-day delay in the effective date of the rule are not required when the rule

involves specified actions, including matters relating to grants or benefits. This rule establishes procedures and conditions related to the provision of assistance to entities conducting activities that promote U.S. agricultural commodities in foreign markets and thus falls within the exemption to the public participation requirements under the APA. Although not required by the APA, CCC has chosen to accept comments on the rule and may consider the comments when determining whether any changes to the regulations are warranted in the future.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the SBREFA of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the CCC is not required by the APA or any other law to publish a proposed rule for this rulemaking. This rule is not a major

rule under SBREFA. SBREFA generally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for congressional review.

Environmental Assessment

The CCC has determined that the RAPP does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), no environmental assessment or environmental impact statement will be prepared for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This program is subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions in this part must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the

relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have Tribal implications that required Tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Assistance Listing found in the System for Award Management to which this rule applies is “Regional Agricultural Promotion Program” – 10.618.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this rule does not change the information collection approved by OMB under control number 0551–0049.

List of Subjects in 7 CFR Part 1489

Agricultural commodities, Exports.

Accordingly, the CCC revises 7 CFR part 1489 to read as follows:

PART 1489—REGIONAL AGRICULTURAL PROMOTION PROGRAM

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Authority: 15 U.S.C. 714c(f).

§ 1489.10 General purpose and scope.

(a) This part sets forth the general terms, conditions, and policies governing the Commodity Credit Corporation's (CCC) operation of the Regional Agricultural Promotion Program (RAPP), which subsumes the former Agricultural Trade Promotion Program (ATP). This program will provide assistance to eligible organizations that conduct market promotion activities, including activities to address existing or potential non-tariff barriers to trade, to promote U.S. agricultural commodities in certain foreign markets. Specific program requirements will be set forth in Notices of Funding Opportunity (NOFO) announced through the Grants.gov website.

(b)(1) In addition to the provisions of this part, other regulations of general applicability issued by the U.S. Department of Agriculture (USDA), including the regulations set forth in chapter XXX of this title, may apply to the RAPP and RAPP Participants, to the extent that the regulations of general applicability in this paragraph (b)(1) do not directly conflict with the provisions of this part. The regulations include, but are not limited to:

- (i) 7 CFR part 1, subpart A.
- (ii) 7 CFR part 3.
- (iii) 7 CFR part 15, subpart A.
- (iv) 2 CFR part 417.
- (v) 2 CFR part 418.
- (vi) 2 CFR part 421.
- (vii) 48 CFR part 31.

(2) In addition, relevant provisions of the CCC Charter Act (15 U.S.C. 714 *et seq.*) and any other statutory provisions that are generally applicable to the CCC are also applicable to the RAPP and the regulations set forth in this part.

(3) RAPP Participants must also comply with Title VI of the Civil Rights Act of 1964 and related civil rights regulations and policies.

(4) Other laws and regulations that apply to the RAPP and RAPP Participants include, but are not limited to:

- (i) 2 CFR part 25.
- (ii) 2 CFR part 170.
- (iii) 2 CFR part 175.
- (iv) 2 CFR part 180.
- (v) 2 CFR part 200.
- (vi) 2 CFR part 400.
- (vii) 37 CFR 401.1.

(viii) Executive Order 13224, as amended, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.”

(c) Under the RAPP, the CCC may provide multi-year grant assistance to eligible U.S. entities to conduct certain marketing and promotion activities, including activities to address existing or potential non-tariff trade barriers, aimed at developing, maintaining,

or expanding commercial export markets for U.S. agricultural commodities. RAPP Participants may receive assistance for either generic or brand promotion activities. While activities generally take place overseas, reimbursable activities may also take place in the United States. The CCC expects that all activities that occur in the United States for which RAPP reimbursement is sought will develop, maintain, or expand the commercial export market for the relevant eligible commodity in accordance with the RAPP Participant's approved RAPP program.

(d) The RAPP generally operates on a reimbursement basis.

(e) The CCC's policy is to ensure that benefits generated by RAPP agreements are broadly available throughout the relevant agricultural sector and that no single entity gains an undue advantage. The CCC also endeavors to enter into RAPP agreements covering a broad array of agricultural commodity sectors. The RAPP is administered by personnel of the Foreign Agricultural Service (FAS) acting on behalf of the CCC.

§ 1489.11 Definitions.

For purposes of this part the following definitions apply:

Activity means a specific foreign market development effort undertaken by a RAPP Participant.

Administrative expenses or costs means expenses or costs of administering, directing, and controlling an organization that is a RAPP Participant. Generally, this would include expenses or costs such as those related to:

(1) Maintaining a physical office (including, but not limited to: rent, office equipment, office supplies, computer hardware and software, office maintenance);

(2) Personnel (including, but not limited to, salaries, benefits, payroll taxes, individual insurance, training);

(3) Communications (including, but not limited to, phone expenses, internet, mobile phones, mobile phone service postage, courier services, television, radio, walkie talkies);

(4) Management of an organization or unit of an organization (including, but not limited to, planning, supervision, supervisory travel, recruiting, hiring);

(5) Utilities (including, but not limited to, sewer, water, energy, Wi-Fi); and

(6) Professional services (including, but not limited to, accounting expenses, financial services, investigatory services).

Approval letter means a document by which the CCC informs an applicant that its RAPP application has been approved for funding. This letter may also approve specific activities and contain terms and conditions in addition to the program agreement. This letter requires a countersignature by the RAPP Participant before it becomes effective.

Attaché/Counselor means the FAS employee representing USDA interests in the foreign country in which promotional activities are conducted.

Brand participant means a U.S. for-profit entity that owns the brand(s) of the eligible commodity to be promoted (or has the exclusive rights to use such brand(s)) and that is participating in the RAPP brand promotion program of another RAPP Participant. This definition does not include any U.S. agricultural cooperatives.

Brand promotion means an activity that involves the exclusive or predominant use of a single U.S. company name, or the logo or brand name of a single U.S. company, or the brand of a U.S. agricultural cooperative, or any activity undertaken by a brand participant in a brand program.

Budget period means the period during which a RAPP Participant can undertake activities consistent with this part and its program agreement and approval letter with CCC. Budget periods will be specified in a RAPP Participant's approval letter.

CCC means the Commodity Credit Corporation, including any agency or official of the United States delegated the responsibility to act on behalf of the CCC.

Constraint means a condition in a particular country or region that needs to be addressed in order to develop, expand, or maintain exports of a specific eligible commodity.

Contribution means an expenditure made by a RAPP Participant, the U.S. industry, or a State agency in support of an approved activity. This includes expenditures to be made by entities in the RAPP Participant's industry in support of the entities' related promotion activities in the markets covered by the RAPP Participant's agreement.

Credit memo means a commercial document, also known as a credit memorandum, issued by the RAPP Participant to a commercial entity that owes the RAPP Participant a certain sum. A credit memo is used when the RAPP Participant owes the commercial entity a sum less than the amount the entity owes the Participant. The credit memo reflects an offset of the amount the RAPP Participant owes the entity against the amount the entity owes to the RAPP Participant.

Demonstration projects means activities involving the erection or construction of a structure or facility or the installation of equipment.

Eligible commodity means any U.S. agricultural commodity or product thereof, excluding tobacco, that is comprised of at least 50 percent by weight, exclusive of added water, of agricultural commodities grown or raised in the United States.

Expenditure means either payment made by a RAPP participant via the transfer of funds or an offset reflected in a credit memo in lieu of a transfer of funds.

FAS means Foreign Agricultural Service, USDA.

FAS website means a website maintained by FAS providing information on RAPP. It is currently accessible at <https://fas.usda.gov/programs/regional-agricultural-promotion-program>.

Foreign third party means a foreign entity that a RAPP Participant works with to promote the export of an eligible commodity under the RAPP program.

Generic promotion means an activity that is not a brand promotion but, rather, promotes an eligible commodity generally. A generic promotion activity may include the promotion of a foreign brand (i.e., a brand owned primarily by foreign interests and being used to market a commodity or product in a foreign market), if the foreign brand uses the promoted eligible commodity from multiple U.S. suppliers. A generic promotion activity may also involve the use of specific U.S. company names, logos, or brand names. However, in that case, the RAPP Participant must ensure that all U.S. companies seeking to promote such eligible commodity in the market have an equal opportunity to participate in the activity and that at least two U.S. companies participate. In addition, an activity that promotes separate items from multiple U.S. companies will be considered a generic promotion only if the promotion of the separate items maintains a unified theme (i.e., a dominant idea or motif) and style and is subordinate to the promotion of the generic theme.

Market means the country or countries targeted by an activity.

Notification means a document from the RAPP Participant by which the RAPP Participant proposes to CCC changes to the activities and/or funding levels in an approved RAPP program agreement and/or approval letter.

Period of performance means the total time interval between the start of a RAPP award and the planned end date, which may include one or more funded portions, or budget periods. A RAPP award's period of performance will be defined by the dates contained in the program agreement.

Product samples means a representative part of a larger whole promoted commodity or group of promoted commodities. Product samples include all forms of a promoted commodity (e.g., fresh or processed), independent of the ultimate utilization of

the sample. Product samples must be used in support of international marketing activities including, but not limited to, displays, food process testing, cooking demonstrations, or trade and consumer tastings.

Program agreement means a document entered into between CCC and a RAPP Participant setting forth the terms and conditions of approved activities under RAPP, including any subsequent amendments to such agreement.

Promoted commodity means an eligible commodity the sale of which is the intended result of a promotional activity.

RAPP means the Regional Agricultural Promotion Program.

RAPP notice means Regional Agricultural Promotion Program notices, which are documents that CCC issues for informational purposes. These RAPP notices are made available electronically on the FAS website. These notices have no legal effect. They are intended to alert RAPP Participants to various aspects of CCC's current administration of the RAPP program.

RAPP Participant or *Participant* means an entity that has entered into a RAPP program agreement with the CCC.

Sales and trade relations expenditures (STRE) means expenditures made on breakfast, lunch, dinner, receptions, and refreshments at approved activities; miscellaneous courtesies such as checkroom fees, taxi fares and tips for approved activities; and decorations for a special promotional occasion that is part of an approved activity.

Sales team means a group of individuals engaged in an approved activity intended to result in specific sales.

SRTG means State Regional Trade Group. An SRTG is a nonprofit association of State-funded agricultural promotion agencies.

Temporary contractor means a contractor, typically a consultant or other highly paid professional, that is hired on a short-term basis to assist in the performance of an activity.

Trade team means a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

UES website means a website maintained by FAS through which applicants may apply and are reimbursed for RAPP and other USDA market development programs. The website is currently accessible to persons with e-authentication certification at <https://apps.fas.usda.gov/ues/webapp/>. FAS may prescribe a different system through which applicants may apply to the RAPP and will announce such system in the applicable NOFO.

Unified Export Strategy (UES) means a standardized online Internet application developed by USDA and available for use by entities to apply to USDA market development programs, including the RAPP.

U.S. agricultural commodity means any agricultural commodity of U.S. origin, including food, feed, fiber, forestry product, livestock, insects, and fish harvested from a U.S. aquaculture farm or harvested by a vessel (as defined in title 46 of the United States Code) in waters that are not waters (including the territorial sea) of a foreign country, and any product thereof.

USDA means the United States Department of Agriculture.

U.S. for-profit entity means a firm, association, or other entity organized or incorporated, located, and doing business for profit in the United States, and engaged in the export or sale of an eligible commodity.

§ 1489.12 Participation eligibility.

(a) To participate in the RAPP as a RAPP Participant, an entity must be:

- (1) A nonprofit U.S agricultural trade organization;
- (2) A nonprofit SRTG;
- (3) A U.S. agricultural cooperative; or
- (4) A State agency.

(b) CCC will enter into an agreement only for the promotion of an eligible commodity.

(c) FAS may set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable NOFO posted on the U.S. Government website for grant opportunities.

§ 1489.13 Application process.

(a) *General application requirements.* CCC will periodically issue a NOFO through the Grants.gov website announcing that it is accepting applications for participation in the RAPP. Applications shall be submitted in accordance with the terms and requirements specified in the NOFO and in this part. Applicants may apply to conduct a generic promotion program and/or a brand promotion program that provides RAPP funds to brand participants for brand promotion, as well as to conduct other market promotion activities, including activities to address existing or potential non-tariff trade barriers. An applicant that is a U.S. agricultural cooperative may also apply for funds to conduct its own brand promotion program.

(b) *Requests for evaluation information.* CCC may request any information that it deems necessary to evaluate an application, including, but not limited to, performance measurement information. Applicants shall provide any requested information in the manner and according to the timeframe specified by CCC.

(c) *Special rules governing demonstration projects funded with CCC resources.* CCC will consider proposals for demonstration projects, provided:

(1) No more than one such demonstration project per constraint is undertaken within a market;

(2) The constraint to be addressed in the target market is a lack of technical knowledge or expertise;

(3) The demonstration project is a practical and cost-effective method of overcoming the constraint; and

(4) A third party must participate in such project through a written agreement with the RAPP Participant.

(d) *Universal identifier and System for Award Management (SAM)*. In accordance with 2 CFR part 25, each entity that applies to the RAPP program and does not qualify for an exemption under 2 CFR 25.110 must:

(1) Be registered in SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by CCC; and

(3) Provide its unique identifier in each application or plan it submits to CCC.

(e) *Reporting subaward and executive compensation information*. In accordance with 2 CFR part 170, each entity that applies to the RAPP program and does not qualify for an exception under 2 CFR 170.110(b) must ensure it has the necessary processes and systems in place to comply with the applicable reporting requirements of 2 CFR part 170 should it receive RAPP funding.

§ 1489.14 Application review and formation of agreements.

(a) *General*. (1) CCC will review all proposals for eligibility and completeness. CCC will evaluate each eligible proposal against the factors described in the appropriate NOFO to identify those applications that it considers to best meet the criteria and objectives outlined in the NOFO. Based on its review and evaluation, CCC will, subject to the availability of funds, recommend an appropriate funding level for each proposal and submit the proposals and funding recommendations to the appropriate officials for

decision. CCC may, when appropriate to the subject matter of the proposal, request the assistance of other U.S. Government experts in evaluating a proposal. All reviewers will be required to sign a conflict-of-interest form, and when conflicts of interests are identified the reviewer will be recused from the objective review process.

(2) When considering applicant organizations, CCC may give priority to those organizations that have the broadest producer representation and affiliated industry participation of the commodity being promoted, as determined by CCC. CCC may require that an applicant participate in the RAPP through another RAPP Participant or applicant.

(3) CCC will approve those applications that it determines best satisfy the criteria and factors specified in the NOFO.

(4) CCC will notify each applicant in writing of the final disposition of its application.

(b) *Formation of agreements.* CCC will send a program agreement (or amendment to an existing program agreement), an approval letter, and a signature card to each approved applicant. The program agreement or amendment and the approval letter will outline which activities and budgets are approved and will specify any special terms and conditions applicable to a RAPP Participant's program, including any requirements with respect to contributions and program evaluations. An applicant that decides to accept the terms and conditions contained in the program agreement or amendment and the approval letter must so indicate by having the appropriate personnel sign the program agreement or amendment and the approval letter and submit these to CCC. Final agreement shall occur when the program agreement or amendment and the approval letter are signed by both parties.

(c) *Signature cards.* The RAPP Participant is encouraged to designate at least two individuals in its organization to sign program agreements and amendments, approval

letters, reimbursement claims, and advance requests. The RAPP Participant shall submit the signature card signed by those designated individuals and by the RAPP Participant's Chief Executive Officer (or designee) to CCC. The Participant shall immediately notify CCC in writing of any changes in signatories and shall submit a revised signature card accordingly.

(d) *UES ID and passwords.* CCC will provide each RAPP Participant with IDs and passwords for the UES website, as necessary. RAPP Participants shall immediately notify CCC whenever a person who possesses the ID and password information no longer needs such information, or when a person who is not authorized gains such information.

(e) *Annual certifications.* A RAPP Participant through which U.S. for-profit entities are participating in the RAPP program shall obtain annual certifications from all such entities that certify their size, as defined in this part. The Participant shall retain these certifications in accordance with the recordkeeping requirements of this part.

(f) *Changes to activities and funding—(1) Adding a new activity.* (i) A RAPP Participant may not conduct a new activity without first obtaining an approved activity budget for such change. To request approval of such activity budget, the RAPP Participant shall submit a notification to CCC.

(ii) A notification for a new activity shall provide an activity justification and identify any related adjustments to the approved strategic plan, including changes in the market, constraint, or opportunity that the activity proposes to address. The notification shall contain the activity description and the proposed budget.

(iii) After receipt of the notification, CCC will inform the RAPP Participant via the UES website whether the requested budget is approved.

(2) *Modifying existing activities and their funding levels.* (i) A RAPP Participant desiring to increase the funding level for existing, approved activities addressing a single constraint or opportunity by more than \$25,000 or 25 percent of the approved funding

level, whichever is greater, must first submit a notification explaining the adjustment to CCC before making such change.

(ii) A RAPP Participant may make significant adjustments below \$25,000 or 25 percent of the approved funding level, whichever is greater, to the funding levels for existing, approved activities without prior notification to CCC, but only if it submits a notification explaining the adjustments to CCC no later than 30 days after the change. Minor adjustments to existing, approved activities and/or funding levels do not require notification.

(iii) Notifications shall describe the activity, changes to the activity, the existing funding level, the proposed funding level, and a justification for transfer of funds, if applicable.

§ 1489.15 Operational procedures for brand promotion programs.

(a) Where CCC approves an application by a RAPP Participant to run a brand promotion program that will include brand participants, the RAPP Participant shall establish brand program operational procedures. The RAPP Participant shall submit to CCC for approval its proposed brand program operational procedures. CCC will notify all RAPP Participants in writing in each Participant's approval letter as to applicable submission dates for and dates for approvals of brand program operation procedures. Such procedures shall include, at a minimum, a brand program application, application procedures, application review criteria, brand participant eligibility requirements, a participation agreement, reimbursement requirements, compliance requirements, reporting and recordkeeping requirements, employment practices, financial management requirements, contracting procedures, and evaluation requirements. The RAPP Participant must submit to CCC for approval any proposed changes to already approved brand program operational procedures before implementing such proposed changes.

(b) The RAPP Participant shall not enter into any participation agreements with brand participants, nor shall it implement any RAPP brand activities, unless and until CCC has communicated in writing its approval of the proposed operational procedures to the RAPP Participant.

(c) Where CCC approves a RAPP Participant's application to run a brand promotion program that will include brand participants, the RAPP Participant shall enter into participation agreements with brand participants. Brand participants' size may not exceed 300 percent of the applicable small business size standard as found in 13 CFR part 121. These agreements must:

(1) Specify a time period for such brand promotion and require that all brand promotion expenditures be made within the RAPP Participant's approved budget period;

(2) Make no allowance for extension or renewal;

(3) Limit reimbursable expenditures to those made in countries and for activities approved in the brand participant's activity plan;

(4) Specify the percentage of promotion expenditures that will be reimbursed, reimbursement procedures, and documentation requirements;

(5) Include a written certification by the brand participant that it either owns the brand of the product it will promote or has exclusive rights to promote the brand in each of the countries in which promotion activities will occur;

(6) Require that all product labels, promotional material, and advertising will identify the origin of the eligible commodity as "American", "Product of the United States of America", "Product of the U.S.", "Product of the U.S.A.", "Product of America", "Grown in the United States of America", "Grown in the U.S.", "Grown in the U.S.A.", "Grown in America", "Made in the United States of America," "Made in the U.S.", "Made in the U.S.A.", "Made in America", or product of, grown in or made in any state or territory of the United States of America spelled out in its entirety, or other

U.S. regional designation if approved in advance by the CCC; that such origin identification will be conspicuously displayed in a manner easily observed as identifying the origin of the product; and that such origin identification will conform, to the extent possible, to the U.S. standard of 1/6 inch (.42 centimeters) in height based on the lower case letter “o”. The use of the above terms as a descriptor or in the name of the product (e.g., Cincinnati style chili, Gina’s American Pizza) does not satisfy the product origin requirement. Phrases “product of”, “grown in” or “made in” are encouraged, but not required. A RAPP Participant that wishes to use an origin statement that varies from those set out in this subsection must submit the proposed statement to CCC for review and must receive approval to use the statement before its use in an activity. A RAPP Participant may request an exemption from this requirement on a case-by-case basis. All such requests shall be in writing and include justification satisfactory to the CCC that the labeling requirement in this paragraph (c)(6) would hinder a RAPP Participant’s promotional efforts. CCC will determine, on a case-by-case basis, whether sufficient justification exists to grant an exemption from the labeling requirement. In addition, the CCC may temporarily waive this requirement where the CCC has determined that such labeling will likely harm sales rather than help them. Such determinations will be announced to RAPP Participants via a RAPP notice issued on the FAS website;

(7) Include a written certification by the brand participant that identifies its size on the date of its application for branded program funding, or that it is a U.S. agricultural cooperative;

(8) Require that the brand participant submit to the RAPP Participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third-party funds or other contributions to program activities; and

(9) Require the brand participant to maintain all original records and documents relating to program activities for three calendar years following the end of the applicable

budget period and make such records and documents available upon request to authorized officials of the U.S. Government.

§ 1489.16 Contribution rules.

(a) In RAPP generic promotion programs, a RAPP Participant shall contribute a total amount in goods, services, and/or cash equal to at least 10 percent of the value of resources provided by the CCC for all generic promotion activities undertaken by the RAPP Participant.

(b) In RAPP brand promotion programs, a RAPP Participant conducting its own brand promotion or a brand participant that is participating in the RAPP brand promotion program of another RAPP Participant shall contribute at least 50 percent of the total eligible expenditures submitted in accordance with § 1489.17 made on each approved brand promotion.

(c) A RAPP Participant must use its own funds and may not use RAPP program funds to pay any administrative costs of the RAPP Participant's U.S. office(s), including legal fees, except as set forth in this part. Where the RAPP Participant uses its own funds to pay for administrative costs, such costs may be counted in calculating the amount of contributions the RAPP Participant contributes to RAPP generic or brand promotion programs.

(d) Regarding eligible contributions:

(1) In calculating the amount of contributions that it will make, and the contributions that the U.S. industry (including expenditures to be made by entities in the applicant's industry or agricultural sector in support of the entities' related promotion activities in the markets covered by the applicant's application) or State agency will make, the RAPP applicant may include the costs listed under paragraph (d)(2) of this section if such expenditures:

(i) Are necessary and reasonable for accomplishment of an approved activity;

(ii) Are not included as contributions for any other Federal award; and

(iii) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to the matching or cost sharing requirements of other Federal programs.

(2) Subject to paragraph (d)(1) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards that target a foreign audience;

(viii) The cost of subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the RAPP Participant;

(ix) The cost of activities conducted overseas;

(x) Credit card fees;

(xi) The cost of any independent evaluation or audit that is not required by the CCC to ensure compliance with program agreement or regulatory requirements;

(xii) The cost of giveaways, awards, prizes and gifts;

(xiii) The cost of product samples;

(xiv) Fees for participating in U.S. Government-sponsored or endorsed export promotion activities;

(xv) The cost of air and local travel in the United States;

(xvi) STRE and the costs associated with trade shows, seminars, and entertainment conducted in the United States where the STRE and costs associated with trade shows, seminars, and entertainment have a programmatic purpose and are authorized in the program agreement and/or the approval letter or authorized by prior written approval of the CCC;

(xvii) Other administrative expenses (e.g., supervisory travel from the U.S. to an overseas office); and

(xviii) The cost of any activity expressly listed as reimbursable in this part.

(3) The following are not eligible contributions:

(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent, related to promoting membership in the Participant organization (sometimes referred to in the industry as “backsell”);

(iii) Any land costs other than allowable costs for office space;

(iv) The cost of refreshments and related equipment provided to office staff;

(v) The cost of insuring articles owned by private individuals;

(vi) The cost of any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(vii) The cost of product development, product modifications, or product research, except as described in § 1489.17(c)(22);

(viii) Slotting fees or similar sales expenditures;

(ix) Membership fees in clubs and social organizations; and

(x) Any expenditure for an activity prior to the CCC’s approval of that activity.

(4) The CCC shall determine, at the CCC's discretion, whether any cost not expressly listed in this section may be included by the RAPP Participant as an eligible contribution.

§ 1489.17 Reimbursement rules.

(a) A RAPP Participant may seek reimbursement for an eligible expenditure if:

(1) The expenditure was necessary and reasonable for the accomplishment of an approved RAPP activity; and

(2) The Participant has not been and will not be reimbursed for such expenditure by any other source.

(b) Subject to paragraphs (a) and (d) of this section, as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, for either brand or generic promotion activities, the CCC will reimburse, in whole or in part, the costs of:

(1) Production and placement of advertising, in print, electronic media, billboards, or posters, which may include advertising the availability of price discounts, except that advertising associated with a coupon or price discount for the RAPP-promoted product is not reimbursable. If advertising is related to both coupons or price discounts for products other than the RAPP Participant's promoted products as well as for RAPP-promoted products, then expenditures for such advertising will not be reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement).

Electronic media include, but are not limited to, radio, television, electronic mail, internet, telephone, text messaging, social media, and podcasting.

(2) Production and distribution of banners, recipe cards, table tents, shelf talkers, and other similar point of sale materials.

(3) Direct mail advertising.

(4) In-store and food service promotions, product demonstrations to the trade and to consumers, and distribution of product samples (but not the purchase of the product samples, except as authorized in paragraph (c)(9) of this section).

(5) Temporary displays and rental of space for temporary displays.

(6) Expenditures, other than travel expenditures, associated with seminars and educational training, whether conducted in the United States or outside the United States.

(7) Subject to paragraph (b)(18) of this section, expenditures, other than travel expenditures, associated with retail, trade and consumer exhibits and shows, whether held outside or inside the United States, including participation fees, booth construction, transportation of related materials, rental of space and equipment, and duplication of related printed materials. However, with regard to non-travel expenditures associated with retail, trade and consumer exhibits and shows held inside the United States, such expenditures are reimbursable only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and, an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from outside the U.S. CCC will compile a list of approved retail, trade and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available, and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(8) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for no more than two representatives of a single brand participant (or RAPP Participant directly running its own brand program) to exhibit their company's (or cooperative's) products at a retail, trade, or consumer exhibit or show held outside the United States.

Representatives may include employees and board members of private companies, employees or members of cooperatives, or any broker, consultant, or marketing representative contracted by the company or cooperative to represent the company or cooperative in sales transactions. All travel should follow a direct or usually traveled route.

(9) Subscriptions that are of a technical, economic, or marketing nature and that are relevant to the approved activities of the RAPP Participant.

(10) Demonstrators, interpreters, translators, receptionists, and similar temporary workers who help with the implementation of individual promotional activities, such as trade shows, in-store promotions, food service promotions, and trade seminars.

(11) Giveaways, awards, prizes, gifts and other similar promotional materials, subject to such reimbursement limitation as CCC may determine and announce in writing to RAPP Participants via a RAPP notice issued on FAS' website. Reimbursement is available only when:

(i) The items are described in detail with a per unit cost in an approved strategic plan; and

(ii) Distribution of the promotional item is not contingent upon the consumer, or other target audience, purchasing a good or service to receive the promotional item.

(12) The design and production of packaging, labeling or origin identification, to be used during the budget period in which the expenditure is made, if such packaging, labeling or origin identification is necessary to meet the importing requirements of a foreign country.

(13) The design, production, and distribution of coupons for products other than the RAPP Participant's promoted products. If such activities include both coupons or price discounts for products other than the RAPP Participant's promoted products as well as for RAPP-promoted products, then expenditures for such activities will not be

reimbursed in whole or in part (e.g., expenditures may not be prorated and submitted for reimbursement).

(14) An audit of a RAPP Participant as required by 2 CFR part 200, subpart F, if the RAPP is the RAPP Participant's largest source of Federal funding.

(15) The translation of written materials as necessary to carry out approved activities.

(16) Expenditures associated with developing, updating, and servicing websites on the Internet that clearly target a foreign audience.

(17) International travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas and inoculations, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, incurred for a foreign trade mission conducted outside the United States that is an activity under an approved branded program and that has met the following conditions:

(i) Trade mission travel for company (or cooperative) representatives was identified as a separate approved activity in the RAPP Participant's UES;

(ii) The trade mission included representatives, as defined in paragraph (b)(8) of this section, from a minimum of five different companies (or cooperatives), and no more than two representatives from each participating company (or cooperative);

(iii) The appropriate FAS overseas office supported the trade mission by dedicating meaningful funding or other resources (such as facilities or staff time) to the activity; and

(iv) The RAPP Participant with the approved brand program produced an itinerary or agenda for the trade mission that demonstrated that company (or cooperative) representatives would be engaged for a minimum of 6 hours per day (except for the first

and last days of the mission) in trade mission activities that include, at a minimum, each of the following:

- (A) A product showcase where the FAS overseas office approved an invitation list of qualified buyers;

- (B) Pre-arranged one-on-one business meetings; and

- (C) Evaluation and feedback sessions with FAS staff and trade mission sponsors.

- (v) Reimbursement is conditional on the RAPP Participant having notified in writing the Attaché/Counselor in the destination country in advance of the travel to that country or region. All travel should follow a direct or usually traveled route.

(18) Where USDA has sponsored or endorsed a U.S. pavilion at a retail, trade and consumer exhibit or show, whether held outside or inside the United States, RAPP funds may be used to reimburse the travel and/or non-travel expenditures of only those RAPP Participants located within the U.S. pavilion. Such expenditures must also adhere to the standard terms and conditions of the U.S. pavilion organizer. All travel should follow a direct or usually traveled route. Upon written request, the CCC may temporarily waive this subsection, on a case-by-case basis, where:

- (i) The trade show is segregated into product pavilions; or

- (ii) A company's distributor or importer is located outside the U.S. pavilion. Such waiver will be provided to the RAPP Participant in writing.

(19) Contracts with U.S.-based organizations when the only contracted service such organizations provide to a RAPP Participant is carrying out a specific market promotion activity in the United States directed to a foreign audience (e.g., a trade mission of foreign buyers coming to the United States to visit U.S. exporters). Such contracts may be reimbursable as a direct promotional expense. If a U.S.-based organization provides administrative services to the RAPP Participant's domestic home office during a budget period, any direct promotional services such organization provides

to the Participant, whether for the Participant's domestic or overseas offices, during the same budget period are not reimbursable.

(c) Subject to paragraphs (a) and (d) of this section as well as the cost principles in 2 CFR part 200 to the extent these principles do not directly conflict with the provisions of this part, but for generic promotion activities only, the CCC will also reimburse, in whole or in part, the cost of:

(1) Temporary contractor fees for contractors stationed overseas, except the CCC will not reimburse any portion of any such fee that exceeds the daily gross salary of a GS-15, Step 10 for U.S. Government employees in effect on the date the fee is earned, unless a bidding process reveals that such a contractor is not available at or below that salary rate.

(2) Subject to paragraph (b)(18) of this section, international travel expenditures, not to exceed the full fare economy rate, including any fees for modifying the originally purchased airline ticket, per diem, passports, visas, and inoculations, for activities held outside the United States or in the United States, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, except that if the activity is participation in a retail, trade, or consumer exhibit or show held inside the United States, then international travel expenditures are covered only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and, an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the United States. The CCC will compile a list of approved retail, trade, and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available, and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(i) The CCC generally will not reimburse any portion of air travel, including any fees for modifying the originally purchased ticket, in excess of the full fare economy rate or when the RAPP Participant fails to notify the Attaché/Counselor in the destination country in advance of the travel to that country or region, unless the CCC determines it was impractical to provide such notice. If a traveler flies in business class or a different premium class, the basis for reimbursement will be the full fare economy class rate for the same flight and the RAPP Participant shall provide documentation establishing such full fare economy class rate to support its reimbursement claim. If economy class is not offered for the same flight or if the traveler flies on a charter flight, the basis for reimbursement will be the average of the full fare economy class rate for flights offered by three different airlines between the same points on the same date, and the RAPP Participant shall provide documentation establishing such average of the full fare economy class rates to support its reimbursement claim.

(ii) In limited circumstances, the RAPP Participant may be reimbursed for air travel up to the business class rate (i.e., a premium class rate other than the first class rate) upon prior written approval by the CCC. Such circumstances are:

(A) Regularly scheduled flights between origin and destination points do not offer economy class (or equivalent) airfare, and the RAPP Participant receives written documentation from its travel agent to that effect at the time the tickets are purchased;

(B) Business class air travel is necessary to accommodate an eligible traveler's disability. Such disability must be substantiated in writing by a physician; and

(C) If an eligible traveler is an employee, contractor, or member of a RAPP participant organization, and the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds 14 hours. In such case, per diem and other allowable

expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (e.g., weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(D) If an eligible traveler is the target of a market development activity (e.g., a foreign buyer, foreign importer, member of the foreign media), then the RAPP Participant may be reimbursed for air travel up to the business class rate when the eligible traveler's origin and/or destination are outside of the continental United States and the scheduled flight time, beginning with the scheduled departure time, ending with the scheduled arrival time, and including stopovers and changes of planes, exceeds five hours. In such cases, per diem and other allowable expenses will also be reimbursable for the day of arrival. However, no expenses will be reimbursable for a rest period or for any non-work days (e.g., weekends, holidays, personal leave, etc.) immediately following the date of arrival.

(iii) Alternatively, in lieu of reimbursing up to the business class rate in such circumstances noted in paragraphs (c)(2)(ii)(C) and (D) of this section, the CCC will reimburse economy class airfare plus per diem and other allowable travel expenses related to a rest period of up to 24 hours, either *en route* or upon arrival at the destination. For a trip with multiple destinations, each origin/destination combination will be considered separately when applying the 14-hour rule for eligibility of reimbursement of business class travel or rest period expenses.

(iv) A stopover for purposes of this paragraph (c)(2) is the time a traveler spends at an airport, other than the originating or destination airport, which is a normally scheduled part of a flight. A change of planes is the time a traveler spends at an airport, other than the originating or destination airport, to disembark from one flight and embark on another.

(v) All travel under this paragraph (c)(2) should follow a direct or usually traveled route. Under no circumstances should a traveler select flights in a manner that extends the scheduled flight time to beyond 14 hours in part to secure eligibility for reimbursement of business class travel. An eligible traveler that is the target of a market development activity is only eligible for a rest period when that traveler flies in economy class and meets the 14-hour test.

(3) Automobile mileage at the local U.S. Embassy rate or rental cars while in travel status.

(4) Other allowable expenditures while in travel status as authorized by the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200.

(5) Accident liability insurance premiums for facilities used jointly with third-party participants for RAPP activities or for RAPP-funded travel of third-party participants, provided the types and extent and cost of coverage are in accordance with the RAPP Participant's policy and sound business practice.

(6) Market research, including research to determine the types of products that are desired in a market.

(7) Legal fees incurred in resolving trade issues with foreign countries.

(8) The sample purchase price, and the cost of transporting samples domestically in the United States to the port of export and then to the first foreign port or first point of entry, for samples of eligible commodities used to provide on-site technical assistance to the trade necessary to facilitate successful use of the relevant eligible commodity by importers. The target of such activity must be the trade, and not consumers, but any product resulting from the technical training can be used to determine consumer preferences.

(9) STRE incurred outside of the United States and STRE incurred within the United States in conjunction with an approved activity where the STRE has a

programmatic purpose and are authorized with prior written approval from the CCC.

RAPP Participants are required to use the appropriate American Embassy representational funding guidelines for breakfasts, lunches, dinners and receptions incurred outside of the United States as the basis for their calculating eligible expenses. RAPP Participants may exceed Embassy guidelines by up to 25 percent without prior approval. RAPP Participants may only exceed 125 percent of Embassy guidelines when they have received written authorization from the FAS Agricultural Counselor at the Embassy. The amount of unauthorized STRE expenses that exceed 125 percent of the guidelines will not be reimbursed. RAPP Participants must pay the difference between the total cost of STRE events and the appropriate amount as determined by the guidelines and this part. For STRE incurred in the United States, the RAPP Participant should provide, in its request for approval, the basis for determining its proposed expenses.

(10) U.S. office(s) administrative support expenses, incurred specifically to administer the RAPP, for the National Association of State Departments of Agriculture, the SRTGs, and the Intertribal Agriculture Council. The level of such funding will be established in the approval letter.

(11) U.S. office(s) administrative support expenses, incurred specifically to administer the RAPP, for any RAPP Participants not identified in paragraph (c)(10) of this section, will be considered, except for agricultural cooperatives. Reimbursement for such expenses shall not exceed eight percent of the RAPP Participant's total RAPP budget. The level of such funding will be established by CCC in the approval letter.

(12) Non-travel expenditures associated with conducting international staff conferences held either in or outside the United States.

(13) Subject to paragraph (b)(18) of this section, domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for international retail, trade, and consumer exhibits and shows conducted

in the United States upon prior written approval by CCC. Domestic travel expenses to such a show or exhibit are covered only if the exhibit or show is: a food or agricultural show with no less than 30 percent of exhibitors selling food or agricultural products; and an international show that targets buyers, distributors and the like from more than one foreign country and no less than 15 percent of its visitors are from countries other than the host country. CCC will compile a list of approved retail, trade, and consumer exhibits and shows held inside the United States for which RAPP reimbursement is available and such list will be announced to RAPP Participants via a RAPP notice issued on FAS' website.

(14) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for seminars and educational training conducted in the United States.

(15) Domestic travel expenditures, as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, for up to two individuals, whether home office RAPP Participant employees, RAPP Participant board members, or State department of agriculture employees paid by the RAPP Participant, or a combination thereof, when such individuals accompany foreign trade missions or technical teams while traveling in the United States where the following conditions are met:

(i) Such trade missions or technical team visits are identified in the RAPP Participant's UES;

(ii) Such trade missions or technical team visits have been approved by CCC; and

(iii) The RAPP-sponsored travelers submit a follow-up trip report to CCC that includes the following:

(A) Purpose for the individuals' participation;

(B) Any pre-arranged business meetings;

(C) Itinerary and/or agenda for the trip; and

(D) Feedback from sponsors and trade mission/technical team members on the success of the trip.

(16) Approved demonstration projects.

(17) Expenditures related to copyright, trademark, or patent registration, including attorney fees.

(18) Rental or lease expenditures for storage space for program-related materials.

(19) Business cards that target a foreign audience.

(20)(i) Expenditures associated with developing, updating, and servicing websites on the Internet that:

(A) Contain a message related to exporting or international trade;

(B) Include a discernible “link” to the FAS website or an FAS overseas office website; and

(C) Have been specifically approved by the appropriate FAS division.

Expenditures related to websites or portions of websites that are accessible only to an organization’s members are not reimbursable.

(ii) Reimbursement claims for websites that include “members only” sections must be prorated to exclude the costs associated with those areas subject to restricted access.

(21) Expenditures not otherwise prohibited from reimbursement that are associated with activities held in the United States or abroad designed to improve market access by specifically addressing temporary, permanent, or impending non-tariff barriers to trade that prohibit or threaten U.S. exports of agricultural commodities. Examples of such expenditures include, but are not limited to: initial pre-clearance programs, educational training, policy advocacy, public relations efforts, foreign country audits of U.S. facilities, export protocol and work plan support, seminars and workshops, study

tours, field surveys, development of pest lists, pest and disease research, database development, and reasonable logistical and administrative support.

(22) Organization costs for overseas offices approved in agreements. Such costs include incorporation fees, brokers' fees, and fees to attorneys, accountants, or investment counselors, whether or not employees of the organization, incurred in connection with the establishment or reorganization of the overseas office, and rent, utilities, communications originating overseas, office supplies, accident liability insurance premiums (provided the types and extent and cost of coverage are in accordance with the RAPP Participant's policy and sound business practice), and routine accounting and legal services required to maintain the overseas office.

(23) With prior CCC approval, the purchase, lease, or repair of, or insurance premiums for, capital goods that have an expected useful life of at least one year, such as equipment, machinery, removable fixtures, computer hardware and software, and portable electronic communications devices (including mobile phones and wireless devices).

(24) Compensation and allowances for housing and cost of living adjustments paid to a U.S. citizen employee or a U.S. citizen contractor stationed overseas, provided such benefits are granted under established written policies, except CCC will not reimburse that portion of:

(i) The total of compensation and allowances that exceed 125 percent of the level of a GS-15 Step 10 salary for U.S. Government employees; or

(ii) Allowances that exceed the rate authorized for U.S. Embassy personnel.

(25) Compensation of non-U.S. citizen staff employees or non-U.S. contractors stationed overseas, subject to the following limitations:

(i) Where there is a local U.S. Embassy Foreign Service National (FSN) salary plan, CCC will not reimburse any portion of such compensation that exceeds the compensation prescribed for the most comparable position in the FSN salary plan; or

(ii) Where an FSN salary plan does not exist, CCC will not reimburse any portion of such compensation that exceeds locally prevailing levels, which the RAPP Participant shall document by a salary survey or other means.

(26) A retroactive salary adjustment for non-U.S. citizen staff employees or non-U.S. contractors stationed overseas that conforms to a change in FSN salary plans, effective as of the date of such change.

(27) Accrued annual leave as of the time employment is terminated or as of such time as required by local law.

(28) Overtime paid to clerical staff of approved RAPP-funded overseas offices.

(29) Such premiums for health or accident insurance and other benefits for foreign national employees that the employer is required by law to pay, provided that such benefits are granted under established written policies.

(30) Legal fees to obtain advice on the host country's labor laws.

(31) Employment agency fees.

(32) Evacuation payments (safe haven) and shipment and storage of household goods and motor vehicles for relocations lasting at least 12 months.

(33) Travel costs for dependents, as allowed in 2 CFR part 200 (e.g., for travel of duration of six months or more with prior approval of CCC).

(34) That portion of the cost of wireless phone plans that is devoted to program activities and monthly service fees prorated at the proportion of program-related usage to total usage.

(d) CCC will not reimburse any cost of:

- (1) Forward year financial obligations, such as severance pay, attributable to employment of foreign nationals;
- (2) Expenses, fines, settlements, or judgments relating to legal suits, challenges or disputes, except as otherwise allowed in 2 CFR part 200 and this part;
- (3) The design and production of packaging, labeling or origin identification, except as specifically allowed in this part;
- (4) Product development, product modification or product research, except as specified in paragraph (c)(21) of this section;
- (5) Product samples to be distributed to consumers;
- (6) Slotting fees or similar sales expenditures;
- (7) The purchase of, construction of, or lease of space for permanent, non-mobile displays, i.e., displays that are constructed to remain permanently in the same location beyond one budget period. However, the CCC may, at its discretion, reimburse the construction or purchase of permanent displays on a case-by-case basis, if the Participant sought and received prior written approval from the CCC of such construction or purchase;
- (8) Rental, lease or purchase of warehouse space, except for storage space for program-related material;
- (9) Coupon redemption or price discounts of the RAPP promoted commodity;
- (10) Refundable deposits or advances;
- (11) Giveaways, awards, prizes, gifts and other similar promotional materials in excess of the limitation that the CCC will determine. Such determination will be announced in writing via a RAPP notice issued on FAS' website;
- (12) Alcoholic beverages that are not a promoted commodity and part of an approved promotional activity;

(13) The purchase, lease (except for use in authorized travel status) or repair of motor vehicles;

(14) Travel of applicants for employment interviews;

(15) Unused non-refundable airline tickets or associated penalty fees, except where travel was restricted by U.S. Government action or advisory;

(16) Independent evaluations or audits, including evaluations or audits of the activities of a subcontractor, if the CCC determines that such a review is needed in order to confirm past or to ensure future program agreement or regulatory compliance;

(17) Any arrangement that has the effect of reducing the selling price of a U.S. agricultural commodity;

(18) Goods, services and salaries of personnel provided by U.S. industry or foreign third party;

(19) Membership fees in clubs and social organizations;

(20) Indemnity and fidelity bonds, except as otherwise allowed in 2 CFR part 200;

(21) Fees for participating in U.S. Government-sponsored activities, other than trade fairs and exhibits;

(22) Business cards that target a U.S. domestic audience;

(23) Seasonal greeting cards;

(24) Office parking fees;

(25) Subscriptions to publications that are not of a technical, economic, or marketing nature or that are not relevant to the approved activities of the RAPP Participant;

(26) U.S. office(s) administrative expenses, including communication costs, except as noted in paragraphs (c)(10) and (11) of this section, and except that usage costs for communications devices incurred while on reimbursable international or domestic travel for approved RAPP brand or generic promotion activities are reimbursable as

eligible travel expenditures as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200;

(27) Any expenditure on an activity that includes any derogatory reference or comparison to other U.S. agricultural commodities;

(28) Payment of U.S. and foreign employees' or contractors' share of personal taxes, except where a foreign country's laws require the RAPP Participant to pay such employees' or contractors' share;

(29) Any expenditure made for an activity prior to the CCC's approval of that activity;

(30) Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening;

(31) Expenditures associated with a RAPP Participant's creation or review of their fraud prevention program, contracting procedures, or brand program operational procedures;

(32) Entertainment (e.g., amusements, diversions, cover charges, personal gifts, or tickets to theatrical or sporting events); and

(33) Refreshments, or related equipment, for office staff.

(e) For a brand promotion activity, the CCC will reimburse no more than 50 percent of the total eligible expenditures made on that activity by a brand participant.

(f) The CCC will reimburse for expenditures made after the conclusion of a RAPP Participant's period of performance, provided:

(1) The activity was completed prior to the expiration date shown in the RAPP Participant's program agreement; and

(2) All expenditures for the activity were made within 6 months following the expiration date shown in the RAPP Participant's program agreement.

(g) A RAPP Participant shall not use RAPP funds for any activity or any expenses incurred by the RAPP Participant prior to the date of the program agreement or after the date the program agreement is suspended or terminated, except as otherwise permitted by the CCC.

(h) Except as otherwise provided in this part, RAPP-funded travel shall conform to U.S. Federal Travel Regulations (41 CFR parts 301 through 304) and 2 CFR part 200, and RAPP-funded air travel shall conform to the requirements of the Fly America Act (49 U.S.C. 40118). For international travel, the RAPP Participant shall notify the Attaché/Counselor in the destination countries in writing in advance of any proposed travel.

(i) The CCC may determine, at the CCC's discretion, whether any cost not expressly listed in this section will be reimbursed.

§ 1489.18 Reimbursement procedures.

(a) Participants are required to use the CCC's UES system to request reimbursement for eligible expenditures under RAPP.

(b) All claims for reimbursement shall be submitted by the RAPP Participant's U.S. office to the CCC through the UES system.

(c) [Reserved]

(d) The CCC will not reimburse claims submitted later than 6 months after the expiration date shown in the RAPP Participant's program agreement.

(e) If the CCC overpays a reimbursement claim, then the RAPP Participant shall repay the CCC the amount of the overpayment either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The Participant shall make such payment within 30 calendar days of the date that they discover, or are made aware, of any overpayment. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

(f) If a RAPP Participant receives a reimbursement or offsets an advanced payment that is later disallowed, the RAPP Participant shall repay the CCC within 30 days of such disallowance the amount disallowed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

(g) RAPP funds may be expended by RAPP Participants only on legitimate, approved activities as set forth in the program agreement and approval letter. If a RAPP Participant discovers that RAPP funds have not been properly spent, it shall notify the CCC and shall within 30 calendar days of its discovery repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars.

(h) The RAPP Participant shall report any actions that may have a bearing on the propriety of any claims for reimbursement in writing to CCC.

§ 1489.19 Advances.

(a) *Policy.* In general, the CCC operates the RAPP on a reimbursable basis.

(b) *Exception.* A RAPP Participant may request an advance of RAPP funds from the CCC for generic promotion activities, provided the RAPP Participant meets the criteria for advance payments in 2 CFR part 200. The CCC will not approve any request for an advance submitted after the expiration date shown in the RAPP Participant's program agreement. At any given time, total payments advanced shall not exceed 40 percent of a RAPP Participant's approved generic activity budget for the budget period. The CCC will not advance funds to a RAPP Participant for brand promotion activities. When approving a request for an advance, the CCC may require the RAPP Participant to carry adequate fidelity bond coverage when the absence of such coverage is considered by the CCC to create an unacceptable risk to the interests of the RAPP. Whether an

“unacceptable risk” exists in a particular situation will depend on a number of factors, such as, for example, the Participant’s history of performance in RAPP; the Participant’s perceived financial stability and resources; and any other factors presented in the particular situation that may reflect on the Participant’s responsibility or the riskiness of its activities.

(c) *Interest.* A RAPP Participant shall deposit and maintain in an insured bank account in the United States all funds advanced by the CCC. The account shall be interest-bearing unless the exceptions in 2 CFR part 200 apply. Interest earned by the RAPP Participant on funds advanced by the CCC is not program income. The RAPP Participant shall remit any interest earned on the advanced funds to the appropriate entity as set forth in 2 CFR part 200.

(d) *Refunds due the CCC.* A RAPP Participant shall fully expend all advances on approved generic promotion activities within 90 calendar days after the date the advance was approved in the UES. By the end of the 90 calendar days, the RAPP Participant must submit reimbursement claims to offset the advance or submit a check made payable to CCC for any unexpended balance. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

§ 1489.20 Financial management.

(a) A RAPP Participant shall implement and maintain a financial management system that conforms to generally accepted accounting principles. A RAPP Participant’s financial management system shall comply with the standards in 2 CFR part 200.

(b) A RAPP Participant shall institute internal controls and provide written guidance to commercial entities participating in its activities to ensure their compliance with this part.

(c) A RAPP Participant shall retain all records concerning a RAPP program transaction for a period of three years after completion of the program transaction and

permit the CCC to have full and complete access to such records during the transaction period and for such three-year period after completion of the program transaction. These records shall include all records pertaining to contractors.

(d) A RAPP Participant shall maintain its records of expenditures and contributions in a manner that allows it to provide information by activity plan, country, activity number, and cost category. Such records shall include:

(1) Receipts for all STRE (actual vendor invoices or restaurant checks, rather than credit card receipts);

(2) Original receipts for any other program-related expenditure in excess of a set amount that CCC will determine and announce in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The CCC may, from time to time, set a different minimum amount. In that case, the CCC will announce the new amount in writing to all RAPP Participants via a RAPP notice issued on the FAS website;

(3) The exchange rate used to calculate the dollar equivalent of expenditures made in a foreign currency and the basis for such calculation;

(4) Copies of reimbursement claims;

(5) An itemized list of claims charged to each of the RAPP Participant's CCC resources accounts;

(6) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

(7) Documentation supporting contributions. These must include the dates, purpose, and location of the activity for which the cash or in-kind items were claimed as a contribution; who conducted the activity; the participating groups or individuals; and

the method of computing the claimed contributions. RAPP Participants must retain and make available for compliance review documentation related to claimed contributions.

(e) Upon request, a RAPP Participant shall provide to the CCC originals of documents supporting reimbursement claims.

§ 1489.21 Reports.

(a) *Contribution report.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report that identifies, by cost category and in U.S. dollar equivalent, contributions made by the Participant, the applicable U.S. industry, and the States during the Participant's RAPP period of performance. Foreign third-party contributions are not to be included in the contribution report.

(b) *Trip reports.* Not later than 45 days after completion of travel (other than local travel), a RAPP Participant shall electronically submit a trip report. The report must include the name(s) of the traveler(s), purpose of travel, itinerary, names and affiliations of contacts, and a brief summary of findings, conclusions, recommendations, and specific accomplishments.

(c) *Research reports.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report on any research conducted pursuant to the approved RAPP program.

(d) *Evaluation reports.* Not later than 6 months after the expiration date shown in the RAPP Participant's program agreement, a RAPP Participant shall submit a report on any evaluations conducted in accordance with the approved RAPP program, including the outcome of action taken with RAPP funding and the increased market access or exports that can be directly attributed to the RAPP program.

(e) *Annual audits.* Where the CCC is designated the cognizant agency for audit, the CCC may require the RAPP Participant to submit to the CCC an annual audit in

accordance with 2 CFR part 200. If the CCC requires an additional audit with respect to a particular agreement, then the RAPP Participant shall arrange for such audit and shall submit to the CCC, in the manner to be specified by the CCC, such audit of the agreement.

(f) *Additional reports.* The CCC may require the submission of additional reports.

(g) *Approval letters.* A RAPP Participant's program agreement and/or approval letter shall specify to whom the Participant shall submit the reports required in this section.

(h) *Program reviews.* FAS, through its authorized representatives, may review project accomplishments, management control systems, and administration of funding provided through the program to ensure adherence to the requirements in this part. During such reviews, FAS will review recipients' files related to the grant-funded program, and technical assistance may be required.

§ 1489.22 Evaluation.

(a)(1) The Government Performance and Results Act (GPRA) of 1993 (5 U.S.C. 306; 31 U.S.C. 1105, 1115–1119, 3515, 9703–9704) requires performance measurement of Federal programs, including the RAPP. Evaluation of the RAPP's effectiveness will depend on a clear statement by Participants of goals to be met within a specified time, schedule of measurable milestones for gauging success, plan for achievement, and assessment of results of activities at regular intervals. The overall goal of the RAPP and of individual Participants' programming is to increase sales that would not have occurred in the absence of RAPP funding. A RAPP Participant that can demonstrate such sales, taking into account extenuating factors beyond the Participant's control, will have met the overall objective of the GPRA and the need for evaluation.

(2) Evaluation is an integral element of program planning and implementation, providing the basis for the strategic plan. The evaluation results guide the development

and scope of a RAPP Participant's program, contributing to program accountability and providing evidence of program effectiveness that directly ties program funds to increased sales.

(b) All RAPP Participants must report annual results against their target market and/or regional constraint/opportunity performance measures. These are outcome results usually based on multiple activities and should demonstrate progress made in the market during the latest budget period. This report shall be completed and submitted to the CCC no later than 6 months following the end of each Participant's budget period.

(c) When deemed appropriate or required by the CCC, a RAPP Participant shall complete a program evaluation. A program evaluation is a review of the RAPP Participant's entire program, or an appropriate portion of the program as agreed to by the RAPP Participant and CCC, to determine the effectiveness of the RAPP Participant's strategy in meeting specified goals. Actual scope and timing of the program evaluation shall be determined by the RAPP Participant and CCC and specified in the approval letter. A RAPP Participant shall submit, via a cover letter to CCC, an executive summary that assesses the program evaluation's findings and recommendations, as well as any proposed changes in program strategy or design as a result of the evaluation. A program evaluation shall contain:

- (1) The name of the party conducting the evaluation;
- (2) The scope of the evaluation;
- (3) A concise statement of the market constraint(s)/opportunity(ies) and the goals specified in the approved strategic plan;
- (4) A description of the evaluation methodology;
- (5) A description of export sales achieved;
- (6) A summary of the findings, including an analysis of the strengths and weaknesses of the program(s); and

(7) Recommendations for future programs.

(d) When deemed appropriate or required by the CCC, RAPP Participants conducting a branded program must also complete a brand promotion evaluation. A brand promotion evaluation is a review of the U.S. and foreign commercial entities' export sales to determine whether the activity achieved the goals specified in the approved RAPP program. Actual scope and timing of the brand promotion evaluation shall be determined by the RAPP Participant and CCC and specified in the approval letter.

(e) On an annual basis, or more often when appropriate or required by the CCC, a RAPP Participant shall complete and submit program success stories. The CCC will announce to all RAPP Participants in writing the detailed requirements for completing and submitting program success stories.

§ 1489.23 Compliance reviews and notices.

(a) USDA staff may conduct compliance reviews of RAPP Participants' activities under the RAPP program. RAPP Participants shall cooperate fully with relevant USDA staff conducting compliance reviews and shall comply with all requests from USDA staff to facilitate the conduct of such reviews.

(b) Upon conclusion of the compliance review, USDA staff will provide a written compliance report to the RAPP Participant. The compliance report will specify whether USDA staff believe that CCC may be entitled to recover funds from the Participant and/or it appears that the Participant is not complying with any of the terms or conditions of the program agreement, approval letter, or the applicable laws and regulations. The compliance report will explain the basis for any recovery of funds from the Participant. Within 60 calendar days of the date the compliance report cover letter is signed, the RAPP Participant shall repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant

shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC. If, however, a RAPP Participant notifies the CCC within 60 calendar days of the date the compliance report cover letter is signed that the Participant intends to file an appeal pursuant to paragraph (e) of this section, then the amount owed to the CCC by the RAPP Participant is not due until the appeal procedures are concluded and the CCC has made a final written determination as to the amount owed. If, as a result of a compliance review, the CCC determines that further review is needed in order to ensure compliance with the requirements of RAPP, then the CCC may require the Participant to contract for an independent audit.

(c) In addition, the CCC may notify a RAPP Participant in writing at any time if CCC determines that CCC may be entitled to recover funds from the Participant. The CCC will explain the basis for any recovery of funds from the Participant in the written notice. The RAPP Participant shall, within 30 calendar days of the date of the notice, repay the CCC the amount owed either by submitting a check payable to the CCC or by offsetting its next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC. If, however, a RAPP Participant notifies the CCC within 30 calendar days of the date of the written notice that the Participant intends to file an appeal pursuant to paragraph (e) of this section, then the amount owed to the CCC by the RAPP Participant is not due until the appeal procedures are concluded and the CCC has made a final determination as to the amount owed.

(d) The fact that a compliance review has been conducted by USDA staff does not signify that a RAPP Participant is in compliance with its program agreement, approval letter, and/or applicable laws and regulations.

(e) For appeals:

(1) A RAPP Participant may, within 60 calendar days of the date of the compliance report or written notice from the CCC, submit a written response to the CCC appealing the report or notice. CCC, at its discretion, may extend the period for response.

(2) After review of the Participant's response, the CCC shall determine whether the Participant owes any funds to the CCC and will inform the Participant in writing of the basis for the determination. The CCC will initiate action to collect such amount by providing the Participant a written demand for payment of the debt pursuant to Debt Settlement Policies and Procedures, 7 CFR part 3.

(3) Within 30 calendar days of the date of the determination, the Participant may request in writing that the CCC reconsider the determination and shall submit in writing the basis for such reconsideration. The Participant may also request a hearing.

(4) If the Participant requests a hearing, the CCC will set a date and time for the hearing. The hearing will be an informal proceeding. A transcript will not ordinarily be prepared unless the Participant bears the cost of a transcript; however, the CCC may in its discretion have a transcript prepared at the CCC's expense.

(5) The CCC will base its final determination upon information contained in the administrative record. The Participant must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the CCC.

§ 1489.24 Failure to make required contribution.

A RAPP Participant's required contribution will be specified in the approval letter. If the RAPP Participant's required contribution is specified as a dollar amount and the RAPP Participant does not contribute a total dollar amount sufficient to make the required contribution, then the RAPP Participant shall pay to the CCC in dollars the difference between the amount actually contributed and the amount specified in the approval letter. If the RAPP Participant's required contribution is specified as a percentage of the total amount reimbursed by the CCC and the RAPP Participant does not

provide a dollar amount of contributions sufficient to achieve the specified percentage, then the RAPP Participant may either return to the CCC the amount of funds reimbursed by the CCC to increase its actual contribution percentage to the required level or pay to the CCC in U.S. dollars the difference between the amount actually contributed and the amount of funds necessary to increase its actual contribution percentage to the required level. A RAPP Participant shall remit such payment within six months after the expiration date shown in the RAPP Participant's program agreement. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance, in writing, by the CCC.

§ 1489.25 Submissions.

For all permissible methods of delivery, submissions required by this part shall be deemed submitted as of the date received by the CCC.

§ 1489.26 Disclosure of program information.

(a) Documents submitted to CCC by RAPP Participants are subject to the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and 7 CFR part 1, subpart A, specifically § 1.12.

(b) Any research conducted by a RAPP Participant pursuant to a RAPP program agreement and/or approval letter shall be subject to the provisions relating to intangible property in 2 CFR part 200.

§ 1489.27 Ethical conduct.

(a) A RAPP Participant shall conduct its business in accordance with the laws and regulations of the country in which an activity is carried out and in accordance with applicable U.S. Federal, State, and local laws and regulations. A RAPP Participant shall conduct its business in the United States in accordance with applicable Federal, State, and local laws and regulations. All RAPP Participants must comply with the regulations in 2 CFR part 200 and this part.

(b) Except for a U.S. agricultural cooperative or a U.S. for-profit entity, neither a RAPP Participant nor its affiliates shall make export sales of eligible commodities covered under the terms of the applicable RAPP agreement. Nor shall such entities charge a fee for facilitating an export sale. A RAPP Participant may, however, collect check-off funds and membership fees that are required for membership in the RAPP Participant. For the purposes of this paragraph (b), *affiliate* means any partnership, association, company, corporation, trust, or any other such party in which the Participant has an investment other than in a mutual fund.

(c) A RAPP Participant shall not limit participation in its RAPP activities to members of its organization. Participants shall ensure that their RAPP-funded programs and activities are open to all otherwise qualified individuals and entities on an equal basis and without regard to any non-merit factors. The RAPP Participant shall publicize its program and make participation possible for commercial entities throughout the relevant commodity sector or, in the case of SRTGs, throughout the corresponding region. This includes providing to such commercial entities, upon request, a copy of any document in its possession or control containing market information developed and produced under the terms of its RAPP agreement. The Participant may charge a fee not to exceed the costs for assembling, duplicating and distributing the materials. This paragraph (c) does not apply to any U.S. agricultural cooperative when implementing its own brand program.

(d) A RAPP Participant shall select U.S. agricultural industry representatives to participate in generic RAPP activities such as trade teams, sales teams, and trade fairs based on criteria that ensure participation on an equitable basis by a broad cross section of the U.S. industry. If requested by the CCC, a RAPP Participant shall submit such selection criteria to the CCC for approval.

(e) All RAPP Participants should endeavor to ensure fair and accurate fact-based advertising. Deceptive or misleading promotions may result in cancellation or termination of a Participant's RAPP agreement and the recovery of CCC funds related to such promotions from the Participant.

(f) The RAPP Participant must report any actions or circumstances that may have a bearing on the propriety of its RAPP program to the appropriate Attaché/Counselor, and its U.S. office shall report such actions or circumstances in writing to the CCC.

§ 1489.28 Contracting procedures.

(a) Neither the CCC nor any other agency of the U.S. Government nor any official or employee of the CCC, FAS, USDA, or the U.S. Government has any obligation or responsibility with respect to RAPP Participant contracts with third parties.

(b) A RAPP Participant shall comply with the procurement standards set forth in paragraphs (c) through (e) of this section when procuring goods and services and when engaging in construction to implement program agreements.

(c) Each RAPP Participant shall establish contracting procedures, for contracts that are funded, in whole or in part, with RAPP funds, that are open, fair, and competitive.

(d) Each RAPP Participant shall submit to the CCC, for CCC approval, written contracting guidelines for contracts that are funded, in whole or in part, with RAPP funds. The CCC will notify all new and existing RAPP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of contracting guidelines. The CCC's approval of such contracting guidelines will remain in place until the CCC retracts its approval in writing, or until new guidelines are approved that supersede them. Once approved by the CCC, these contracting guidelines shall govern all of a Participant's RAPP-funded contracting involving contracts with a minimum annual value that CCC will determine and announce

in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The CCC may, from time to time, set a different minimum value. In that case, the CCC will announce the new amount in writing to all RAPP Participants via a RAPP notice issued on the FAS website. The guidelines shall indicate the method for evaluating proposals received for all contract competitions, the method for monitoring and evaluating performance under contracts, and the method for initiating corrective action for unsatisfactory performance under contracts. The RAPP Participant may modify and resubmit these guidelines for re-approval at any time. In addition to the requirements in 2 CFR part 200, these guidelines shall include, at a minimum, the following:

(1) Procedures for developing and publicizing requests for proposals, invitations for bids, and similar documents that solicit third party offers to provide goods or services. Solicitations for professional and technical services shall be based on clear and accurate descriptions of and requirements related to the services to be procured. Such procedures must include a conflict-of-interest provision that states that no employee, officer, board member, or agent thereof of the RAPP Participant will participate in the review, selection, award or administration of a contract if a real or apparent conflict of interest would arise. Such a conflict would arise when an employee, official, board member, agent, or the employee's, officer's, board member's, agent's family, partners, or an organization that employs or is about to employ any of the parties indicated in this paragraph (d)(1), has a financial or other interest in the firm selected for an award. Procedures shall provide that officers, employees, board members, and agents thereof shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or subcontractors. Procedures shall also provide for disciplinary actions to be applied for violations of such standards by officers, employees, board members or agents thereof;

(2) Procedures for reviewing proposals, bids, or other offers to provide goods and services. Separate procedures shall be developed for various situations, including, but not limited to: solicitations for highly technical services; solicitations for services that are not common in a specific market; solicitations that yield receipt of three or more bids; solicitations that yield receipt of fewer than three bids;

(3) Requirements to conduct all contracting in an openly competitive manner. Individuals who develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals for procurement of any goods or services, and such individuals' families or partners, or an organization that employs or is about to employ any of the aforementioned, shall be excluded from competition for such procurement. RAPP Participants' written contracting guidelines may detail special situations where the prohibitions in this subparagraph do not apply, such as in situations involving highly specialized technical services or situations where the services are not commonly offered in a specific market;

(4) Requirements to perform and document in the procurement files some form of price or cost analysis, such as a comparison of price quotations to market prices or other price indicia, to determine the reasonableness of the offered prices in connection with every procurement action that is governed by the contracting guidelines;

(5) Requirements to conduct an appropriate form of competition every three years on all multi-year contracts that are governed by the contracting guidelines. However, contracts for in-country representation are not required to be re-competed after the initial award. Instead, the performance of in-country representation must be evaluated and documented by the RAPP Participant annually to ensure that the terms of the contract are being met in a satisfactory manner; and

(6) Requirements for written contracts with each provider of goods, services, or construction work. Such contracts shall require such providers to maintain adequate records to account for funds provided to them by the RAPP Participant.

(e) A RAPP Participant may undertake RAPP promotional activities directly or through a domestic or foreign third party. However, the RAPP Participant shall remain responsible and accountable to the CCC for all RAPP promotional activities and related expenditures undertaken by such third party and shall be responsible for reimbursing CCC for any funds that CCC determines should be refunded to the CCC in relation to such third party's promotional activities and expenditures.

§ 1489.29 Property standards.

The RAPP Participant shall insure all RAPP-funded property and equipment acquired in furtherance of program activities and safeguard such against theft, damage and unauthorized use. The Participant shall promptly report any loss, theft, or damage of property to the insurance company.

§ 1489.30 Anti-fraud requirements.

(a) *All RAPP Participants.* (1) All RAPP Participants shall submit to the CCC for approval a detailed fraud prevention program. The CCC will notify all new and existing RAPP Participants in writing in each Participant's approval letter and through the FAS website as to applicable submission dates for and dates for approvals of fraud prevention programs. RAPP Participants should review their fraud prevention programs annually. The fraud prevention program shall, at a minimum, include an annual review of physical controls and weaknesses, a standard process for investigating and remediation of suspected fraud cases, and training in risk management and fraud detection for all current and future employees. The RAPP Participant shall not conduct or permit any RAPP promotion activities to occur unless and until the CCC has communicated in writing approval of the RAPP Participant's fraud prevention program.

(2) The RAPP Participant, within five business days of receiving an allegation or information giving rise to a reasonable suspicion of misrepresentation or fraud that could give rise to a claim by CCC, shall report such allegation or information in writing to such USDA personnel as specified in the Participant's RAPP program agreement and/or approval letter. The RAPP Participant shall cooperate fully in any USDA investigation of such allegation or occurrence of misrepresentation or fraud and shall comply with any directives given by the CCC or USDA to the RAPP Participant for the prompt investigation of such allegation or occurrence.

(b) *RAPP Participants with brand programs.* (1) The RAPP Participant may charge a fee to brand participants to cover the cost of the fraud prevention program.

(2) The RAPP Participant shall repay to the CCC funds paid to a brand participant through the RAPP Participant on claims that the RAPP Participant or the CCC subsequently determines are unauthorized or otherwise non-reimbursable expenses within 30 days of the RAPP Participant's determination or CCC's disallowance. The RAPP Participant shall repay CCC by submitting a check to CCC or by offsetting the RAPP Participant's next reimbursement claim. The RAPP Participant shall make such payment in U.S. dollars, unless otherwise approved in advance by CCC. A RAPP Participant operating a brand program in strict accordance with an approved fraud prevention program, however, will not be liable to reimburse CCC for RAPP funds paid on such claims if the claims were based on misrepresentations or fraud of the brand participant, its employees or agents, unless the CCC determines that the RAPP Participant was grossly negligent in the operation of the brand program regarding such claims. The CCC shall communicate any such determination to the RAPP Participant in writing.

§ 1489.31 Program income.

Any revenue or refunds generated from an activity, e.g., participation fees, proceeds of sales, refunds of value added taxes (VAT), the expenditures for which have been wholly or partially reimbursed with RAPP funds, shall be used by the RAPP Participant in furtherance of its approved RAPP activities in the budget period during which the RAPP funds are available for obligation by the RAPP Participant. The use of such revenue or refunds shall be governed by this part. Interest earned on funds advanced by the CCC is not program income.

§ 1489.32 Amendment.

A program agreement may be amended in writing with the written consent of the CCC and the RAPP Participant.

§ 1489.33 Noncompliance with an agreement or this part.

If a RAPP Participant fails to comply with any term in its program agreement or approval letter, or this part, the CCC may take one or more of the enforcement actions in 2 CFR part 200 and, if appropriate, initiate a claim against the RAPP Participant, following the procedures set forth in this part. The CCC may also initiate a claim against a RAPP Participant if program income or CCC–provided funds are lost due to an action or omission of the RAPP Participant.

§ 1489.34 Suspension, termination, and closeout of agreements.

A program agreement may be suspended or terminated in accordance with the suspension and termination procedures in 2 CFR part 200. If an agreement is terminated, the applicable regulations in 2 CFR part 200 will apply to the closeout of the agreement.

§ 1489.35 Paperwork reduction requirements.

The paperwork and record keeping requirements imposed by this part have been approved by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act of 1995. The control number for this information collection is 0551–0049.

Marcus Graham,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 2023-25015 Filed: 11/16/2023 8:45 am; Publication Date: 11/17/2023]